

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Universal Studios, Inc.,

Complainant,

vs.

Southern California Edison Company,

Defendant.

Case No. 01-01-043
(Filed January 26, 2002)**ORDER EXTENDING STATUTORY DEADLINE**

Public Utilities Code Section 1701.2(d) provides that adjudicatory cases such as this one shall be resolved within 12 months after they are initiated, unless the Commission makes findings why that deadline cannot be met and issues an order extending the 12-month deadline. In this proceeding, the 12-month deadline for resolving the complaint is January 26, 2002.

The complaint in this case was filed on January 26, 2001. The complainant, Universal Studios, Inc. (Universal) alleges that it operates an entertainment production studio and related businesses that receive electric service from Southern California Edison Company (Edison) under Edison's I-6 tariff. Under this tariff, customers like Universal can elect to take interruptible service, and those who do so are subject to requests for interruption under certain conditions. If these customers do not curtail their load when requested to do so by Edison, they are subject to penalties.

The complaint arises out of the request for interruption that Universal received from Edison on June 27, 2000. Universal chose not to interrupt its load, which led to the imposition of a penalty of \$395,409.60. The complaint alleges that Edison's own actions were the "proximate cause" of the curtailment on June 27, 2000, because "Edison deliberately under-scheduled its generation capacity requirements in the day ahead market for June 27th," which made it "almost certain" that the Independent System Operator (ISO) would be forced to declare a Stage 2 alert, and that Edison would have to request load curtailments. (Complaint, ¶¶12-13.) The complaint continues that Edison "deliberately under-scheduled its generation capacity to avoid the cost of purchased power," because it could not recover those costs in rates. Universal contends that this conduct constituted a breach of Edison's duties under Tariff Rule 14, which requires Edison to "exercise reasonable diligence to furnish/deliver a continuous and sufficient supply of electricity to its customers and to avoid any shortage or interruption thereof." (*Id.* ¶¶15-16, 18-21.) Because Edison failed to meet its obligations under Tariff Rule 14, Universal contends that it should be excused from having to pay the above-noted penalty.

On March 8, 2001, Edison filed an answer denying the material allegations of the complaint, accompanied by a motion to dismiss. In its motion, Edison argues that the complaint should be dismissed pursuant to Pub. Util. Code § 1702, because Universal has failed to show any violation of law. Noting that Tariff Rule 14 only requires Edison to exercise "reasonable diligence" in delivering electricity to customers, that the rule expressly does not "guarantee a continuous or sufficient supply [of electricity] or freedom from interruption[s]," and that the rule exempts Edison from liability for interruptions or shortages "from any cause not within [Edison's] control," Edison argues the curtailment request of June 27, 2000 resulted from weather conditions, transmission

constraints, and actions by the ISO and generators, and not from any under-scheduling. Moreover, Edison continues, neither Tariff Rule 14, the I-6 tariff nor the tariffs of the ISO or the Power Exchange required Edison to take any actions that it failed to take.¹

As noted above, the arguments of both Universal and Edison depend in substantial part upon Edison's I-6 tariff, the context for measuring Edison's obligations under Tariff Rule 14 in this case. However, in view of the close relationship between the allegations here and the issues we were called upon to consider in Phase I of Rulemaking (R.) 00-10-002, our inquiry into the effect of interruptible programs on energy prices and the reliability of the electric system, we did not consider it feasible to address Universal's complaint until we had an opportunity to consider the history and application of the I-6 tariff in R.00-10-002. Because Phase I of that consideration has only recently been concluded, it has not been feasible to meet the 12-month deadline of Pub. Util. Code § 1701.2(d) applicable to this case.

One of the many issues we considered in Phase I of R.00-10-002 was whether interruptible customers taking service under the I-6 tariff should be allowed to "opt out" of the tariff retroactively. In Decision (D.) 01-04-006, we concluded that customers under the I-6 tariff should be able to opt out of interruptible service (and take firm service at higher firm rates) retroactive to November 1, 2000. (*Mimeo.* at 13-19.)² In order to avoid defeating the purposes

¹ On March 21, 2001, Universal filed a response to Edison's March 8 pleadings, arguing that the complaint did state a cause of action.

² In reaching this conclusion, we also noted that customers would be obligated to pay penalties for failure to interrupt when asked by the utility "through the time the opt-out or adjustment in firm service level is effective." (*Id.* at 19.) In footnote 9 of D.01-04-006,

Footnote continued on next page

of the interruptible program, we also adopted Edison's suggestion that neither new nor existing customers would be eligible for interruptible service under the I-6 tariff unless the customer filed a declaration stating that "the customer does not have, and will not obtain, any insurance for the purpose of . . . paying non-compliance penalties for willful failure to comply with requests for curtailment." (*Id.* at 23-27.)

Edison filed an application for rehearing of D.01-04-006, which argued *inter alia* that the decision to allow opting out by interruptible customers retroactive to November 1, 2000 violated numerous statutory provisions. On November 8, 2001, we issued D.01-11-031, which denied Edison's rehearing application after an extensive discussion of the utility's grounds for challenging the retroactive opt-out decision. (*Mimeo.* at 9-17.)

Now that the Phase I issues concerning the I-6 tariff have been decided in R.00-10-002, there is no reason not to proceed with the issues raised by Universal's complaint. Accordingly, we will direct the assigned Administrative Law Judge (ALJ) to hold a prehearing conference (PHC) within 90 days after the mailing date of this decision. With the benefit of the PHC, the ALJ will be able to decide whether this case can be decided on the pleadings, or whether an evidentiary hearing will be necessary. After the PHC, the ALJ should issue a schedule for resolving this proceeding promptly.

Under Rule 77.7(f)(4) of the Commission's Rules of Practice and Procedure, the Commission may waive the otherwise-applicable 30-day period for public review and comment on a decision that extends the 12-month deadline set forth

we specifically pointed out that this meant "any penalties incurred up to and through November 2000."

in Pub. Util. Code § 1701.2(d). Under the circumstances of this case, it is appropriate to waive the 30-day period for public review and comment.

Findings of Fact

1. The complaint in this case was filed on January 26, 2001.
2. Edison filed an answer and motion to dismiss the complaint on March 8, 2001.
3. The 12-month statutory deadline would be January 26, 2002, unless this date is extended pursuant to Pub. Util. Code § 1701.2(d).
4. The issues raised by the complaint, answer and motion to dismiss all involve Edison's I-6 tariff, under which customers who have elected interruptible service from Edison are subject to penalties if they do not comply with curtailment requests.
5. The history and application of Edison's I-6 tariff were among the issues considered in Phase I of R.00-10-002.
6. The Commission did not consider it feasible to address the issues raised by the complaint in this case until the issues in R.00-10-002 relating to the I-6 tariff were resolved.
7. The decision ending Phase I of R.00-10-002, D.01-04-006, concluded that I-6 customers should be able to "opt out" of interruptible service retroactive to November 1, 2000, and that continued eligibility for interruptible service under the tariff should require a declaration stating that the customer did not have and would not obtain insurance reimbursing the customer for willful refusals to comply with curtailment requests.
8. Edison's application for rehearing of D.01-04-006 was denied in D.01-11-031.
9. In light of the circumstances summarized in Findings of Fact 4-8, this matter could not be resolved within the 12-month statutory deadline.

Conclusion of Law

The 12-month statutory deadline imposed by Public Utilities Code Section 1701.2(d) cannot be met, and therefore should be extended until this proceeding is resolved.

O R D E R

IT IS ORDERED that:

1. The 12-month statutory deadline in this proceeding, January 26, 2001, is extended until further order.
2. The assigned Administrative Law Judge shall hold a prehearing conference (PHC) within 90 days after the mailing date of this decision, and based on the results of the PHC, shall establish a schedule for the completion of this proceeding.

This order is effective today.

Dated _____, at San Francisco, California.